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8 ACLU OF SOUTHERN CALIFORNIA

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 **ACLU OF SOUTHERN**
13 **CALIFORNIA,**

14 Plaintiff,

15 vs.

16 **UNITED STATES DEPARTMENT**
17 **OF HOMELAND SECURITY; and**
18 **UNITED STATES IMMIGRATION**
19 **AND CUSTOMS ENFORCEMENT,**
a component of the Department of
Homeland Security,

20 Defendant.
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CASE NO. 19-983

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

FREEDOM OF INFORMATION ACT
5 U.S.C. § 552

1 Plaintiff, the ACLU of Southern California (“ACLU SoCal” or “Plaintiff”),
2 brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,
3 against the United States Department of Homeland Security (“DHS”) and the
4 United States Immigration and Customs Enforcement (“ICE”) (collectively,
5 “Defendants”) to (1) seek the release of all reports and audits (“ICE Reports”) prepared by the
6 Detention Standards Implementation Initiative (“DSII”) of the American Bar Association’s (“ABA”) Commission on Immigration from 2008 to
7 present; and (2) enforce Plaintiff’s right to a waiver of fees for organizations that
8 seek the production of public records sought in the public interest.
9

10 **JURISDICTION AND VENUE**

11 1. This Court has federal subject matter jurisdiction over this action and
12 personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). Because
13 this action arises under federal law against an agency of the United States, this
14 Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331.

15 2. Venue lies in this district pursuant to 28 U.S.C. §§ 1391(e)(1) and 4
16 U.S.C. § 552(a)(4)(B).

17 **PARTIES**

18 3. Plaintiff is a non-partisan, non-profit public interest organization
19 whose mission is to defend and secure the individual liberties and rights set out by
20 the Constitution and Bill of Rights, including the rights of immigrants. Since at
21 least the late-1970s, Plaintiff has monitored and responded to the federal
22 government’s immigration actions. A significant aspect of Plaintiff’s advocacy
23 and public education work is the dissemination of information to the public
24 through a variety of means, including the procurement and release of public
25 information regarding the detention of immigrants.

26 4. Plaintiff frequently shares its information with the news media, and its
27 staff members serve as regular commentators in local and national print, radio,
28 television, and internet news media. Plaintiff also disseminates information to the

1 public electronically through its website (www.aclusocal.org), social media,
2 weekly action alert emails to its members, and video and audio pieces about civil
3 liberties issues. Further, the organization issues reports documenting civil liberties
4 issues, sends out newsletters to its members, and produces “Know Your Rights”
5 documents, briefing papers, fact sheets, and other educational and informational
6 materials. Plaintiff’s staff members regularly conduct “Know Your Rights”
7 workshops for members of the public; speak on civil liberties issues at public
8 events and conferences; and testify before local, state and federal bodies.

9 5. Defendant DHS is a United States government entity charged with
10 ensuring the safety and security of the United States. DHS has oversight
11 pertaining to federal preparations to deal with terrorism and other emergency
12 management, and, through ICE, management of customs, border security, trade,
13 and immigration. DHS has possession, custody, and control of the records that
14 Plaintiff seeks.

15 6. Defendant ICE is a component of the Department of Homeland
16 Security and is responsible for enforcing federal laws governing border control,
17 customs, trade and immigration. ICE is an “agency” within the meaning of 5
18 U.S.C. § 552(f)(1). ICE has possession, custody, and control of the records that
19 Plaintiff seeks.

20 **STATUTORY BASIS FOR CLAIM**

21 7. The Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, mandates
22 disclosure of records held by a federal agency in response to a request for such
23 records by a member of the public, unless records fall within certain narrow
24 statutory exemptions.

25 8. “The basic purpose of FOIA is to ensure an informed citizenry, vital
26 to the functioning of a democratic society, needed to check against corruption and
27 to hold the governors accountable to the governed.” *See NLRB v. Robbins Tire &*
28 *Rubber Co.*, 437 U.S. 214, 242 (1978). Through access to government

1 information, FOIA helps the public better understand the operations of the
2 government, thereby enabling a vibrant and functioning democracy.

3 9. Any member of the public may make a request for records to an
4 agency of the United States under FOIA. To ensure public access to materials
5 subject to FOIA, 5 U.S.C. section 552 contains provisions requiring that fees
6 associated with record requests be waived or reduced under certain circumstances,
7 including where the “disclosure of the information is in the public interest,” such
8 as upon a request made by “public interest watchdog groups” such as Plaintiff. 5
9 U.S.C. § 552(a)(4)(A)(iii); *Inst. for Wildlife Prot. v. U.S. Fish & Wildlife Serv.*, 290
10 F. Supp. 2d 1226, 1232 (D. Or. 2003) “The legislative history ... demonstrates that
11 Congress intended independent researchers, journalists, and public interest
12 watchdog groups to have inexpensive access to government records in order to
13 provide the type of public disclosure believed essential to our society.”

14 10. FOIA provides that an agency shall furnish documents without charge
15 or at a reduced charge if disclosure of the information is in the public interest
16 because it “is likely to contribute significantly to public understanding of the
17 operations or activities of the government,” and is “not primarily in the commercial
18 interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k)
19 (DHS six-factor test for evaluating request for public interest fee waiver).

20 11. Requests for fee waivers are to be “liberally construed in favor of
21 waivers for noncommercial requesters.” *Fed. CURE v. Lappin*, 602 F. Supp. 2d
22 197, 201 (D.D.C. 2009) (citation and quotations omitted).

23 12. An agency that receives a FOIA request must respond in writing to the
24 requestor within twenty business days after the receipt of such request. 5 U.S.C.
25 § 552(a)(6)(A)(i). In its response the agency must inform the requester whether or
26 not it intends to comply with the request (which might include a fee waiver or fee
27 reduction request), provide reasons for its determination, and inform the requestor
28 of her right to appeal the determination. *Id.*

STATEMENT OF FACTS

13. On January 9, 2018, Plaintiff filed a FOIA request (“Request”) with Defendants seeking the release of all ICE Reports from 2008 to present. Specifically, it requested the release of any and all records relating to or concerning inspections, audits, and reports prepared by the DSII of the ABA’s Commission on Immigration regarding immigration detention centers from 2008 to present, including but not limited to any finalized reports or audits, drafts of reports or audits, and any response or communication by ICE or any contractor operating an immigration detention facility regarding any final or draft reports or audits prepared by the ABA. A true and correct copy of this Request is attached hereto and incorporated herein as **Exhibit A**.

14. As Plaintiff explained in its Request, since 2001, the ABA has conducted inspections and prepared reports regarding immigration detention centers in the United States. These reports are prepared as part of the ABA’s larger mission to increase access to justice and humane treatment for men and women in immigration detention. Defendants publicly published the ABA’s ICE Reports from 2001 to 2008 at <https://www.ice.gov/foia/library>, doing so after being spurred by a three-year FOIA lawsuit filed by the National Immigrant Justice Center (NIJC) in 2006. *See* National Immigrant Justice Center, *Department of Homeland Security Releases Immigration Detention Inspection Reports*, https://www.immigrantjustice.org/press_releases/department-homeland-security-releases-immigration-detention-inspection-reports (July 8, 2009).

15. Defendants’ prior acquiescence in producing the 2001 to 2008 ICE Reports demonstrates that there is no basis for Defendants to oppose the release of the post-2008 ICE Reports.

16. Unfortunately, Defendants have not made public any ICE Reports issued after 2008, despite the fact that the ABA has continued to conduct inspections and issue reports during the period from 2008 to present. For example,

1 in approximately 2014, the ABA completed an ICE Report regarding the Adelanto
 2 Detention Facility, a contract detention center operated by GEO Group (“GEO”) in
 3 Adelanto, California. This report has never been made public.

4 17. Through its pending Request, Plaintiff seeks to inform the public on a
 5 matter of vital public concern and interest: the treatment of immigrants, including
 6 asylum seekers, in the care and custody of the federal government. The ICE
 7 Reports from 2008 to present will present a much-needed independent assessment
 8 of ICE’s detention standards and conditions, which govern the treatment of
 9 immigrants in federal custody. The public is entitled to know what has been
 10 revealed by the ABA’s independent reporting on the federal government’s
 11 detention facilities over the past decade, including the ABA’s assessment as to
 12 whether federal detention standards have been properly followed.

13 18. Disclosure of the ICE Reports to the public is particularly critical in
 14 light of (1) the significant, public, and general interest in how immigrants are
 15 treated within federal immigration facilities; and (2) the existence of multiple,
 16 repeated, and widespread violations of detainees’ rights and detention centers’
 17 failure to comply with detention standards. *See, e.g.* Paloma Esquivel, “*We don’t*
 18 *feel OK here*”: *Detainee deaths, suicide attempts, and hunger strikes plague*
 19 *California immigration facility*, L.A. Times (Aug. 8, 2017),
 20 [http://www.latimes.com/local/lanow/la-me-ln-adelanto-detention-20170808-](http://www.latimes.com/local/lanow/la-me-ln-adelanto-detention-20170808-story.html)
 21 [story.html](http://www.latimes.com/local/lanow/la-me-ln-adelanto-detention-20170808-story.html); DHS OIG, *Management Alert on Issues Requiring Immediate Action at*
 22 *the Theo Lacy Facility in Orange, California* (OIG-17-43-MA),
 23 <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2017oig-mga-030617.pdf>
 24 (Mar. 6, 2017); Nixon Peabody LLP, *To Live and Law in LA: Inside an immigrant*
 25 *detainee camp*, [https://www.buzzsprout.com/150281/839488-inside-an-immigrant-](https://www.buzzsprout.com/150281/839488-inside-an-immigrant-detainee-camp)
 26 [detainee-camp](https://www.buzzsprout.com/150281/839488-inside-an-immigrant-detainee-camp) (Oct. 24, 2018).

27 19. Compliance with governing standards is a matter of life and death; in
 28 several cases, the federal government’s failure to comply with detention standards

1 has resulted in the deaths of immigrants in federal custody, including the deaths of
 2 minor children. *See, e.g.* CBS Los Angeles, *Exclusive: Report Blames Detainee's*
 3 *Death On Immigration Center's Medical Staff* (Feb. 24, 2014),
 4 [http://losangeles.cbslocal.com/2014/02/24/exclusive-report-blames-detainees-](http://losangeles.cbslocal.com/2014/02/24/exclusive-report-blames-detainees-death-on-immigration-centers-medical-staff/)
 5 [death-on-immigration-centers-medical-staff/](http://losangeles.cbslocal.com/2014/02/24/exclusive-report-blames-detainees-death-on-immigration-centers-medical-staff/); ICE Office of Detention Oversight,
 6 *Compliance Inspection, Adelanto Correctional Facility*,
 7 [http://www.ice.gov/doclib/foia/odo-compliance-](http://www.ice.gov/doclib/foia/odo-compliance-inspections/adelantoCorrectionalFac_Adelanto-CA-Sept_18-20-2012.pdf)
 8 [inspections/adelantoCorrectionalFac_Adelanto-CA-Sept_18-20-2012.pdf](http://www.ice.gov/doclib/foia/odo-compliance-inspections/adelantoCorrectionalFac_Adelanto-CA-Sept_18-20-2012.pdf); Miriam
 9 Jordan, *8-Year-Old Migrant Child From Guatemala Dies in U.S. Custody*, N.Y.
 10 Times (Dec. 25, 2018), [https://www.nytimes.com/2018/12/25/us/guatemalan-boy-](https://www.nytimes.com/2018/12/25/us/guatemalan-boy-dies-border-patrol.html)
 11 [dies-border-patrol.html](https://www.nytimes.com/2018/12/25/us/guatemalan-boy-dies-border-patrol.html).

12 20. Public disclosure of the ICE Reports from 2008 to present is further
 13 necessitated by the apparent and admitted failure of the federal government to
 14 monitor detention facilities and comply with required standards. On June 28,
 15 2018, the Department of Homeland Security's Office of the Inspector General
 16 ("DHS-OIG") revealed that regular inspections performed by private contractors
 17 and ICE's Office of Detention Oversight "do not ensure adequate oversight or
 18 systemic improvements in detention conditions, with some deficiencies remaining
 19 unaddressed for years." DHS-OIG, *ICE's Inspections and Monitoring of Detention*
 20 *Facilities Do Not Lead to Sustained Compliance or Systematic Improvements*
 21 (OIG-18-67), [https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-](https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf)
 22 [67-Jun18.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf) (June 26, 2018).

23 21. The DHS-OIG report further found that ICE's Office of Detention
 24 Oversight inspectors only inspected 33 out of 211 federal detention facilities in
 25 2017 – a rate where each facility would only be inspected every three years. *Id.* at
 26 p. 3. Where private contractors were utilized by ICE to perform inspections,
 27 DHS-OIG observed that some inspectors declared standards were being met
 28 despite only reviewing written policies – these inspectors never observed whether

1 the written policies were actually being followed. *Id.* at p. 6-7. Private contractor
 2 inspectors also failed to follow their own inspection protocols, asking detainees
 3 about conditions of confinement “in the presence of detention facility personnel,”
 4 selecting detainees for interviews by asking first if they spoke English, and then
 5 proceeding to conduct interviews only in the English language. *Id.* at p. 8.

6 22. Most egregiously, the DHS-OIG report found that some detention
 7 facilities willfully defied and violated required detention standards:

8 “A detention standard requires the facility to allow detainees
 9 to help other detainees voluntarily and free-of-charge prepare
 10 legal documents. In addressing a deficiency in this area, the
 11 facility responded that it did not permit such assistance,
 12 stating, ‘It is the policy of the [facility] not to allow
 13 inmates/detainees to assist others with their legal issues . . .
 14 The [facility] chooses not to change its policy regarding the
 15 issues noted’ . . . several facilities continue to strip search all
 16 incoming detainees without establishing reasonable suspicion,
 17 as required by detention standards. Even when inspections
 18 documented this as a deficiency, the facilities continued
 routine strip searches of detainees during intake without
 proper documentation. Other examples of repeat deficiencies
 include facilities failing to notify ICE about alleged or proven
 sexual assaults.”

19 *Id.* at p. 12-13.

20 23. Indeed, as recently as January 29, 2019, the DHS-OIG issued a
 21 scathing report about ICE’s failure to monitor and ensure its contractors’
 22 compliance, documenting “thousands of instances of the facilities’ failures to
 23 comply with detention standards.” DHS-OIG, *ICE Does Not Fully Use*
 24 *Contracting Tools to Hold Detention Facility Contractors Accountable for Failing*
 25 *to Meet Performance Standards* (OIG-19-18),
 26 <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>
 27 (January 19, 2018), p. 1. Rather than pursue corrective action or financial penalties
 28 against non-compliant contractors, DHS-OIG revealed that ICE has routinely

1 “issued waivers to facilities with deficient conditions,” despite having “no formal
2 policies and procedures to govern the waiver process,” and “allow[ing] officials
3 without clear authority to grant waivers.” *Id.*

4 24. In sum, the sheer volume and intensity of widespread media coverage,
5 governmental reporting, public outrage and debate, and known violations regarding
6 the rights and treatment of immigrants in detention plainly demonstrate an
7 overriding public interest in disclosure of the ICE Reports from 2008 to present.

8 25. Despite the fact that disclosure of the ICE Reports from 2008 to
9 present is plainly in the public interest, and despite the fact that Defendants have
10 previously disclosed ICE Reports from 2001 through 2008, Defendants have failed
11 to comply with Plaintiff’s FOIA request since it was made over a year ago – far
12 longer than the twenty business days prescribed by 5 U.S.C. § 552(a)(6)(A)(i). It
13 has not released a single document, much less begun the process of producing
14 responsive documents.

15 26. In fact, other than a cursory acknowledgement e-mail on January 10,
16 2018, Defendants did not substantively respond to Plaintiff’s January 9, 2018
17 FOIA request until February 15, 2018. When ICE did respond, it represented that
18 it would “make every effort to comply with [Plaintiff’s] request in a timely
19 manner.” A true and correct copy of ICE’s February 15, 2018 response to
20 Plaintiff’s FOIA request is attached hereto and incorporated herein as **Exhibit B**.

21 27. No further communications were received from Defendants until
22 April 13, 2018, when DHS-OIG provided a letter to Plaintiff, stating that Plaintiff’s
23 FOIA request would “necessitate a thorough and wide-ranging search,” and
24 “estimat[ing] a response to [Plaintiff’s] request to be provided within 30 business
25 days.” DHS-OIG further represented that it would “make every effort to comply
26 with [Plaintiff’s] request in a timely manner,” and that DHS-OIG “ha[d] not yet
27 made a decision on [Plaintiff’s] request for a fee waiver.” A true and correct copy
28 of DHS-OIG’s April 13, 2018 response to Plaintiff’s FOIA request is attached

1 hereto and incorporated herein as **Exhibit C**.

2 28. Nearly ten months have passed. Defendants still have not provided
3 any records to Plaintiff, nor have they engaged in any communications with
4 Plaintiff regarding the status of Plaintiff's FOIA and fee waiver requests.

5 **COUNT I: VIOLATION OF FOIA**

6 29. Plaintiff re-alleges and incorporates by reference the allegations in
7 each of the preceding paragraphs of this Complaint.

8 30. Defendants have violated FOIA by failing to produce the ICE Report
9 records from 2008 to present that are responsive to Plaintiff's January 9, 2018
10 request.

11 31. Plaintiff and the public have been and will continue to be irreparably
12 harmed until Defendants are ordered to comply with Plaintiff's FOIA request.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully requests that this Court:

15 1. Declare Defendants' failure to comply with FOIA to be unlawful;

16 2. Enjoin Defendants from continuing to withhold from the public the
17 ICE Report records responsive to Plaintiff's FOIA request: specifically, any and all
18 records relating to or concerning inspections, audits, and reports prepared by the
19 DSII of the ABA's Commission on Immigration regarding immigration detention
20 centers from 2008 to present, including but not limited to any finalized reports or
21 audits, drafts of reports or audits, and any response or communication by ICE or
22 any contractor operating an immigration detention facility regarding any final or
23 draft reports or audits prepared by the ABA;

24 3. Order Defendants to produce the ICE Report records without further
25 delay;

26 4. Enjoin Defendants from assessing fees or costs for processing of
27 Plaintiff's FOIA request;

28 5. Award Plaintiff its costs and reasonable attorney's fees incurred in

1 this action as provided by 5 U.S.C. § 552(a)(4)(E); and

2 6. Grant Plaintiff such other and further relief as this Court may deem
3 just and proper.

4
5 Dated: February 8, 2019

NIXON PEABODY LLP

6
7 /s/ Neal J. Gauger

8 Jason P. Gonzalez
9 Neal J. Gauger
10 Attorneys for Plaintiff
11 ACLU OF SOUTHERN CALIFORNIA
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